

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STUART RADCLIFF SELK,

Defendant.

No. CR 04-0065 LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER _____

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NUMBER _____

Neither in these instructions nor in any ruling, action, or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NUMBER _____

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NUMBER _____

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, the documents and other things received as exhibits, and stipulations, that is, agreements between the parties that certain facts are as they have stated.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions, and comments by the lawyers are not evidence.

2. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, you were instructed that some evidence was received for a limited purpose only, and you must follow that instruction.

Exhibits were received for demonstrative purposes only (Government Exhibits 78, 79). They will not be available to you in the jury room.

INSTRUCTION NUMBER _____

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER _____

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NUMBER ____

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

You have heard evidence that certain witnesses received reduced sentences in criminal cases in state court in return for their cooperation with the prosecution in this case. Such testimony was received into evidence and may be considered by you. You may give the testimony of the witness such weight as you think it deserves. Whether or not the testimony of the witness may have been influenced by a hope of receiving a reduced sentence is for you to determine.

You have heard testimony from certain witnesses who stated that he or she participated in the crimes charged against the defendants. Such testimony was received in evidence and may be considered by you. You may give the testimony such weight as you think it deserves. Whether or not the witness’s testimony may have been influenced by a desire to please the government or strike a good bargain with the government about his or her own situation is for you to determine.

(CONTINUED)

INSTRUCTION NUMBER ____ (Cont'd)

You have heard evidence that certain witnesses have each received a promise from the government that the witness's testimony in this case will not be used against the witness in a criminal case. In other words, the witness received "use immunity." The witness's testimony was received in evidence and may be considered by you. You may give the witness's testimony such weight as you think it deserves. Whether or not the witness's testimony may have been influenced by the government's promise is for you to determine.

You have heard evidence that certain witnesses were once convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give that witness's testimony.

INSTRUCTION NUMBER ____

The government and the defendant stipulated—that is, they have agreed—that certain facts are as they have stated. You must therefore treat those facts as having been proved.

INSTRUCTION NUMBER _____

Exhibits have been admitted into evidence and are to be considered along with all the other evidence to assist you in reaching a verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdict, in the same condition as it was received by you.

INSTRUCTION NUMBER ____

As you know, there were three defendants on trial here: Robert Owen Bell, Valerie Kupka, and Stuart Radcliff Selk. The charges against defendants Robert Owen Bell and Valerie Kupka have been resolved and thus you will not be asked to make a finding as to whether they are guilty or not guilty. You should not guess about or concern yourself with the reason for this resolution. You are not to consider this fact when deciding if the government has proved, beyond a reasonable doubt, its case against Stuart Radcliff Selk.

Stuart Radcliff Selk is entitled to have his case decided solely on the evidence which applies to him. Some of the evidence in this case is limited under the rules of evidence to Robert Owen Bell and Valerie Kupka, and cannot be considered against Stuart Radcliff Selk.

INSTRUCTION NUMBER _____

The testimony and exhibits regarding Robert Owen Bell's prior conviction must not be considered when you are deciding if the government has proved, beyond a reasonable doubt, its case against Stuart Radcliff Selk.

The testimony and exhibits (Gov't Ex. 1, 2, 3, 4, 4A, 5A-5J, 9, 10, 10A, 11, 12A-E) relating to the searches of Robert Owen Bell's residence on August 1, 2002, and August 8, 2002, may not be considered in determining whether Stuart Radcliff Selk is guilty of the offense charged in Count 4.

The purported statement by Robert Owen Bell to Kris Smith that he got materials to manufacture methamphetamine from Valerie Kupka must not be considered when you are deciding if the government has proved, beyond a reasonable doubt, its case against Stuart Radcliff Selk.

The purported statement by Robert Owen Bell to Michael Woodward that he gave Stuart Radcliff Selk one-half pound of methamphetamine must not be considered when you are deciding if the government has proved, beyond a reasonable doubt, its case against Stuart Radcliff Selk.

INSTRUCTION NUMBER _____

The testimony and exhibits (Gov't Ex. 13, 14, 16, 16A, 17, 18, 19, 20, 21, 22A, 22B, 23, 24, 25, 26, 27, 28, 29, 30A-X, 31) relating to the search of the Decoy Lounge on September 26, 2002, may not be considered in determining whether Stuart Radcliff Selk is guilty of the offense charged in Count 4.

The testimony and exhibits (Gov't Ex. 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47H, 47D, 47B, 47A, 47N, 47P, 47Q, 47F, 47M, 47K, 47G, 47V, 47O, 47W, 48, 49, 50, 51, 52, 53, 53A, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75) relating to the search of Valerie Kupka's residence on September 26, 2002, may not be considered in determining whether Stuart Radcliff Selk is guilty of the offense charged in Count 4.

The purported statement by Valerie Kupka to Brian Houlahan to the effect that she worked with Robert Owen Bell and Stuart Radcliff Selk to manufacture methamphetamine may not be considered in determining whether Stuart Radcliff Selk is guilty of the offense charged in Count 4.

The purported statement by Valerie Kupka to Brian Houlahan to the effect that she could get methamphetamine from Robert Owen Bell and Stuart Radcliff Selk may not be considered in determining whether Stuart Radcliff Selk is guilty of the offense charged in Count 4.

INSTRUCTION NUMBER _____

The purported statement of Matthew Varner to Michael Woodward that Robert Owen Bell used 2000 pills to make a batch of methamphetamine is stricken and shall not be considered by you in determining the guilt of Stuart Radcliff Selk.

The purported statement by Jared (“Tiny”) to Michael Woodward that Stuart Radcliff Selk transferred one-half pound of methamphetamine to Robert Owen Bell is stricken and shall not be considered by you in determining the guilt of Stuart Radcliff Selk.

Government Exhibit 46 is not admitted into evidence and shall not be considered by you in determining the guilt of Stuart Radcliff Selk.

INSTRUCTION NUMBER ____

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much as weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NUMBER _____

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER _____

The Indictment in this case charged Stuart Radcliff Selk with two offenses.

Since the trial started, however, Count 1 charging Stuart Radcliff Selk with conspiracy to manufacture methamphetamine has been resolved. Therefore Count 1 of the Indictment is no longer before you and the remaining count charged against Stuart Radcliff Selk is Count 4. You should not guess about or concern yourself with the reason for the resolution. You are not to consider this fact when deciding if the government has proved beyond a reasonable doubt the count which remains, which is Count 4.

Count 4 of the Indictment charges that during about 2002, Stuart Radcliff Selk, who was an unlawful user of controlled substances, that is methamphetamine, marijuana, and heroin, did knowingly possess, in and affecting commerce, one or more firearms, namely a semi-automatic stainless steel handgun of unknown make, model, and caliber, and a rifle of unknown make, model, and caliber.

The defendant has pleaded not guilty to the crime with which he is charged.

As I told you at the beginning of the trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find a defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of a particular crime charged.

There is no burden upon the defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NUMBER ____

You are instructed as a matter of law that methamphetamine, marijuana, and heroin are controlled substances. You must ascertain whether or not the substances in question as to the offense charged were methamphetamine, marijuana, or heroin. In so doing, you may consider all the evidence in the case which may aid in the determination of that issue.

INSTRUCTION NUMBER ____

Count 4 of the Indictment charges Stuart Radcliff Selk with the crime of being an unlawful drug user in possession of a firearm, which has three essential elements:

- One,* during about 2002, Stuart Radcliff Selk was an unlawful user of controlled substances, that is, methamphetamine, marijuana, and heroin;
- Two,* Stuart Radcliff Selk knowingly possessed a semi-automatic stainless steel handgun or a rifle while he was an unlawful user of a controlled substance; and
- Three,* the semi-automatic stainless steel handgun or rifle was transported across a state line at some time during or before his possession of it.

For you to find Stuart Radcliff Selk guilty of the crime of being an unlawful user of controlled substances in possession of a firearm as charged in Count 4, the government must prove each of these elements beyond a reasonable doubt; otherwise, you must find Stuart Radcliff Selk not guilty of Count 4.

INSTRUCTION NUMBER ____

In considering whether the government has met its burden of proving the offense of unlawful user of controlled substance in possession of a firearm, as alleged in Count 4 of the Indictment, you are further instructed as follows:

If you have found beyond a reasonable doubt that the firearm in question was manufactured in a state other than the State of Iowa, or a country other than the United States, and that the defendant possessed that firearm in the State of Iowa, then you may, but are not required to, find that it was transported across a state line.

The term “firearm” means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

The term “user of a controlled substance” means a person who uses a controlled substance in a manner other than as prescribed by a licensed physician.

The defendant must have been actively engaged in the use of a controlled substance during the period of time he possessed the firearm, but the law does not require that he used the controlled substance at the precise time he possessed the firearm. An inference that a person was a user of a controlled substance may be drawn from evidence of a pattern of use or possession of a controlled substance that reasonably covers the time the firearm was possessed.

INSTRUCTION NUMBER ____

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in “actual possession” of it.

A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in “constructive possession” of it.

If one person alone has actual or constructive possession of a thing, possession is “sole.” If two or more persons share actual or constructive possession of a thing, possession is “joint.”

Whenever the word “possession” has been used in these instructions it includes “actual” as well as “constructive” possession and also “sole” as well as “joint” possession.

INSTRUCTION NUMBER _____

You will note the Indictment charges that the offense was committed “on or about,” “between about,” or “during about” certain dates. The government need not prove with certainty the exact date or the exact time period of the offense charged. It is sufficient if the evidence established that the offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NUMBER_____

An act is done “knowingly” if a defendant realized what he or she was doing and did not act through ignorance, mistake or accident. The government is not required to prove that a defendant knew that his or her acts or omissions were unlawful. You may consider the evidence of a defendant’s acts and words, along with all other evidence, in deciding whether a defendant acted knowingly.

INSTRUCTION NUMBER _____

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NUMBER _____

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NUMBER _____

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

INSTRUCTION NUMBER _____

Attached to these instructions you will find one Verdict Form. The Verdict Form is simply the written notice of the decision that you reach in this case. The answer to the Verdict Form must be the unanimous decision of the jury.

You will take the Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed on an answer to the Verdict Form, your foreperson will fill out the Form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdict as accords with the evidence and these instructions.

DATE

**LINDA R. READE
JUDGE, U. S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STUART RADCLIFF SELK,

Defendant.

No. CR 04-0065 LRR

**VERDICT FORM - COUNT 4
STUART RADCLIFF SELK**

We, the Jury, find the defendant, Stuart Radcliff Selk, _____ of the crime
Guilty/Not Guilty
of being an unlawful user of controlled substances in possession of one or more firearms
during about 2002, as charged in Count 4 of the Indictment.

FOREPERSON

DATE